

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

RONALD L. OBREY, JR.,)	CIVIL NO. 02-00033 LEK
)	
Plaintiff,)	
vs.)	
)	
DONALD C WINTER, Secretary of)	
the Navy,)	
)	
Defendant.)	

**ORDER GRANTING PLAINTIFF'S OBJECTIONS TO
DEFENDANT'S BILL OF COSTS FILED ON DECEMBER 2, 2008**

Before the Court is Plaintiff Ronald L. Obrey, Jr.'s ("Plaintiff") Objections to Defendant's Bill of Costs Filed on December 2, 2008 ("Objections"), filed on January 5, 2009. Defendant Donald C. Winter, in his capacity as the Secretary of the Navy, ("Defendant") filed his reply to the Objections ("Reply") on January 6, 2009. The Court finds this matter suitable for disposition without a hearing pursuant to Rule LR7.2(d) of the Local Rules of Practice of the United States District Court for the District of Hawaii ("Local Rules"). After careful consideration of the Bill of Costs, Objections, Reply, and the relevant legal authority, Plaintiff's Objections are HEREBY GRANTED for the reasons set forth below. Defendant's request for costs is HEREBY GRANTED IN PART AND DENIED IN PART. The Court directs the Clerk of the Court to tax cost in the amount of \$8,721.86 in favor of Defendant and against Plaintiff.

DISCUSSION

Plaintiff originally filed this employment discrimination action on January 14, 2002. The judgments after two prior trials were each reversed on appeal. This Court presided over a third jury trial from October 15, 2008 to October 30, 2008. The jury found in favor of Defendant and judgment was entered on November 3, 2008.

On December 2, 2008, Defendant filed his Bill of Costs seeking \$10,235.99 in costs consisting of the following:

Fees of the court reporter	\$ 4,077.19
Fees for printing	\$ 1,095.60
Witness fees	\$ 3,825.07
Taxation of costs ordered after 2005 trial	<u>\$ 1,238.13</u>
Total	\$10,235.99

[Bill of Costs at 1; Exh. D to Bill of Costs.]

Pursuant to a stipulation approved by this Court, Plaintiff filed his Objections on January 5, 2009. Plaintiff asks the Court to reduce the award of taxable costs to \$8,721.86. Plaintiff objects to the taxation of \$76.00 for the condensed deposition transcripts of George Tai See, Frank Pestana, and Michael Kawachi, and asks that the Court award only \$4,001.19 for fees of the court reporter. [Objections at 8.]

Plaintiff also objects to the taxation of witness fees

for Captain John Arthur Edwards' pretrial attendance on October 14, 2008, and for trial attendance on October 15 through 18, 2008. Plaintiff states that Captain Edwards was not present on October 15, 16, and 17, and there was no trial held on October 18. Plaintiff therefore asks that the Court deduct the \$40.00 per day fee for these five days. Plaintiff does not contest the other costs associated with Captain Edwards' appearance, nor does he contest the fees for Dr. Gary Skoog. Plaintiff argues that the Court should tax \$3,625.07 in witness fees. [Id. at 8-9.]

Plaintiff does not object to the taxation of Defendant's printing fees. [Id. at 9.]

Finally, Plaintiff argues that the costs taxed after the 2005 trial are not currently taxable because the Ninth Circuit Court of Appeals reversed the judgment entered after the 2005 trial and remanded the case for re-trial. Plaintiff argues that the order taxing costs associated with the 2005 trial was also reversed. [Id. at 9-10.]

In his Reply, Defendant states that he does not agree with the arguments set forth in the Objections. The Reply, however, states that "for expediency purposes and to save judicial resources, Defendant will not contest Plaintiff's objections and request that the Court assess costs in the amount of \$8,721.86." [Reply at 2.]

As the prevailing party, Defendant is entitled to taxable costs pursuant to Federal Rule of Civil Procedure 54(d)(1). Plaintiff does not object to the taxation of \$8,721.86 in costs. To the extent that Defendant's Bill of Costs sought additional costs in excess of that amount, Defendant has waived his claim to such costs.

This Court has reviewed Defendant's Bill of Costs and FINDS that the uncontested costs are taxable pursuant to 28 U.S.C. § 1920 and Local Rule 54.2(f). The Court FINDS that Defendant is entitled to taxable costs of \$8,721.86.

CONCLUSION

On the basis of the foregoing, Plaintiff's "Objections to Defendant's Bill of Costs Filed on December 2, 2008", filed on January 5, 2009, are HEREBY GRANTED and Defendant's request for costs is HEREBY GRANTED IN PART AND DENIED IN PART. The Court directs the Clerk of the Court to tax \$8,721.86 in costs in favor of Defendant and against Plaintiff. Plaintiff shall tender payment of the taxable costs to Defendant via defense counsel by no later than **March 9, 2009**.

IT IS SO ORDERED.

DATE AT HONOLULU, HAWAII, January 7, 2009.



/S/ Leslie E. Kobayashi

Leslie E. Kobayashi
United States Magistrate Judge

RONALD L. OBREY, JR. V. DONALD C. WINTER, ETC.; CIVIL NO. 02-00033 LEK; ORDER GRANTING PLAINTIFF'S OBJECTIONS TO DEFENDANT'S BILL OF COSTS FILED ON DECEMBER 2, 2008